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IN THE

# Supreme Court of the United States

October Term 1968

IN THE MATTER OF THE WINGREEN CO., ET AL

J. H. BROCK as trustee for the WINGREEN CO., a FLORIDA corporation; the DANIA CORPORATION, a FLORIDA corporation; and the LAKE WORTH CO., a FLORIDA corporation,

*Petitioner,*

*vs.*

The MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY, a MASSACHUSETTS corporation,

*Respondent.*

## APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

IRVING M. WOLF
*Attorney for the Petitioner*
916 Biscayne Building
Miami, Florida

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IN THE

# SUPREME COURT OF THE UNITED STATES

October Term 1968

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No. _____

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IN THE MATTER OF THE WINGREEN CO., ET AL

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J. H. BROCK as trustee for the WINGREEN CO., a FLORIDA corporation; the DANIA CORPORATION, a FLORIDA corporation; and the LAKE WORTH CO., a FLORIDA corporation,

*Petitioner,*

*vs.*

The MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY, a MASSACHUSETTS corporation,

*Respondent.*

---

**APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.**

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APPENDIX
A

IN THE

# UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

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## No. 25,303

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MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY and COLLEGE INN, INC.,
*Appellants,*

*vs.*

J. H. BROCK, as Trustee of THE WINGREEN COMPANY, et al.,
*Appellees.*

---

**Appeal from the United States District Court for the Southern District of Florida**

---

(December 5, 1968)

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Before THORNBERRY and SIMPSON, Circuit Judges and SUTTLE, District Judge.

SIMPSON, Circuit Judge: This appeal involves an objection by a creditor to the amount of the allowances by the District Court of interim fees to the trustee and

his attorney in a corporate reorganization under Chapter X of the Bankruptcy Act, 11 USCA, § 501 et seq. This appeal was allowed by the court under the authority of § 250 of the Bankruptcy Act, 11 USCA, § 650.[1] There is no merit the contention of appellee that the order in question was not appealable.

There is no merit in the contention of appellee that Massachusetts Mutual, a secured creditor, has not been adversely affected by the order in question and thus has no right to appeal. We hold that § 206[2] of the Act, 11 USCA, § 606, accords the right to maintain this appeal. Cf. **In re Keystone Realty Holding Co.**, 3 Cir. 1941, 117 F.2d 1003. See also 6A Collier on Bankruptcy (14th Ed.), ¶ 9.23(2). Massachusetts Mutual is the holder of a first mortgage on one of the properties of the Wingreen Company and its interest lies in the fact that the fees in question may result in the assessment of administrative costs against that property.

The trustee also urges that this court is without jurisdiction for the reason that Massachusetts Mutual failed to obtain leave to appeal prior to the expiration of the time allowed within which to seek permission from

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[1] § 250 of the Bankruptcy Act, applicable in corporate reorganization proceedings under Chapter X provides:

"Appeal may be taken in matters of law or fact from orders making or refusing to make allowances of compensation or reimbursement, and may, in the manner and within the time provided for appeals by this Title, be taken to and allowed by the circuit court of appeals independently of other appeals in the proceeding, and shall be summarily heard from the original papers."

[2] § 206 in pertinent part:

"The debtor, the indenture trustee, and any creditor or stockholder of the debtor shall have the right to be heard on all matters arising in a proceeding under this chapter . . . "

the circuit court to appeal. This is answered adversely to the trustee by the case of **Reconstruction Finance Corporation v. Prudence Securities Advisory Group**, 1941, 311 U.S. 582, 61 S.Ct. 333, 85 L.Ed. 367. The court here held that the appeal must be taken to the court of appeals within the time prescribed in 11 USCA, § 48 (a), but that it was not the fair intendment of § 250, supra, that the appeal must be allowed within that time.

There is thus no impediment whatever to our reaching the merits of this controversy: Whether the District Court abused its discretion in awarding the interim fees in question to the trustee and his counsel. We are constrained to the view that the awards were excessive under the facts and, as such, constitute an abuse of discretion.

The facts are of great importance in answering a question such as is posed here. There are three debtor corporations, The Wingreen Company, The Dania Corporation, and The Lake Worth Company, all controlled by the same individuals, and being interrelated as to indebtedness. Their petitions, filed on January 25, 1966, seeking to have their affairs reorganized under the Chapter X provisions, were consolidated.

The thrust of the reorganization proceedings is one of virtual liquidation. The Dania Corporation and The Lake Worth Company were holding companies, controlling shares of the capital stock of banks. These corporations have been liquidated and washed out for all practical purposes by the sale of the stocks to liquidate indebtedness, and to dispose of pending litigation. The Wingreen Company is in operation but on a much reduced basis. It

is a real estate holding company and its business consisted of acquiring real estate and developing the same by improving the parcels with apartment houses, office buildings and motels. The reorganization proceedings involved in excess of 900 creditors, with some 50 claiming secured status.

Mr. Brock was appointed receiver of the debtors on February 8, 1966 and Mr. Wolff was appointed attorney for the receiver. On May 23, 1966 the court approved the petitions for reorganization and appointed Mr. Brock as trustee and Mr. Wolff as attorney for the trustee. Mr. Brock is a retired vice president of Eastern Airlines while his counsel is an able lawyer having broad experience in the bankruptcy field.

This appeal involves the interim award of fees to the trustee and his counsel for the period September 1, 1966-December 31, 1966. Detailed statements of services rendered were filed with the court by the trustee and his counsel. These reflected that the trustee had spent a total of 396.5 hours on the affairs of the debtors during the period. He was awarded his requested fee, $20,000.00 or approximately $50.00 per hour. His counsel was awarded his requested fee of $25,000.00 for 222.5 hours or approximately $113.00 per hour.

There have been two previous interim fee awards from which no appeal was taken. They are pertinent to the question presented on this appeal. The entire picture must be assessed to the extent possible. Moreover, the District Court has consistently taken the position in these proceedings that all interim fee awards were to be considered in making the final award of fees and we think

that this is the proper approach. One of these previous awards was for services rendered by Mr. Brock as receiver and for his counsel as attorney for the receiver. These fees covered the period February 8, 1966-May 26, 1966. The receiver sought a fee of $15,000 for himself and $25,000 for his counsel. The receiver was awarded $12,500 for services entailing 352.5 hours or approximately $35.00 per hour. Counsel was awarded $20,000 for services of 320 hours or approximately $62.50 per hour. The other award was for the period May 24, 1966-August 31, 1966 when each was awarded his requested fee. The trustee was awarded $13,500 for services of 356.5 hours or approximately $37.00 per hour while counsel was awarded $12,500 for 174 hours or approximately $72.00 per hour.

Our relation of the awards to an hourly basis is not to imply that the District Court purported to use the time involved as anything more than one factor to be considered in arriving at the amount of the fees to be awarded. The court considered as other factors the complexity of the problems involved and the results obtained by the trustee and his counsel.

The District Court has a broad discretion in the award of fees. **Calhoun v. Hertwig,** 5 Cir., 1966, 363 F.2d 257; **Campbell v. Green,** 5 Cir., 1940, 112 F.2d 143. This discretion is not to be interfered with short of a showing that it has been abused. Such an abuse may stem from a factual basis or form the application of an improper legal standard. Our conclusion that the fees here in question are excessive results from a difference in view as to the applicable legal standard.

Our difference with the District Court is that we apply an additional factor: The public interest which is inherent in bankruptcy matters must be considered in

awarding fees. The object is to draw a balance to the end that competent trustees and counsel are obtainable in matters of this kind because of the knowledge that they will be fairly compensated. They must not and cannot expect, however, to be overcompensated for the court must exercise its discretion for the double purpose of fairly treating the trustee and his counsel while at the same time doing equity to the debtor and creditors. **Calhoun v. Hertwig,** supra, p. 261. The result likely to accrue to the debtor estate from the standpoint of overall value must also be given prime consideration in drawing the balance. A good statement of the problem is contained in **Finn v. Childs Co.,** 2 Cir., 1950, 181 F.2d 431, a reorganization proceeding where the appeal was from final allowances for trustee and counsel fees. The court contrasted ordinary litigation with a reorganization proceeding and said:

> "We have examined the applications for allowances of each of the parties involved here, with their detailed record of amount of time spent and the kind of work performed. We are not disposed to question the reasonableness of such fees by metropolitan practitioners for services of this kind when performed in the course of ordinary litigation. But in a reorganization proceeding, where the lawyers look for compensation to the debtor's estate which may belong, in equity, largely to others than those who have requested their services, they should have in mind the fact that the total aggregate of fees must bear some reasonable relation to the estate's value. Under these circumstances they cannot always expect to be compensated at the same rate as in litigation of the usual kind. . ."

The court then held that an award to the trustee whose overhead, as here, had been paid out of the estate, of $22.50 per hour, and to the law firm representing the trustee at the rate of $18.50 per hour was excessive. See also **Fox Markets, Inc. v. Ely,** 9 Cir., 1964, 337 F.2d 461; and **London v. Snyder,** 8 Cir., 1947, 163 F.2d 621.

With respect to the overall result and the total of the fees sought, we are fortunate in having facts and circumstances not in the record of this case which we may consider in addition to the prior awards. We judicially know from our own court records that interim fees for subsequent periods are being challenged. It is permissible for us to take these subsequent proceedings into consideration. **United States v. California Cooperative Canneries,** 1929, 279 U.S. 553, 555, 49 S.Ct. 423, 73 L.Ed. 838; **The Aspen Mining & Smelting Co. v. Billings,** 1893, 150 U.S. 31, 38, 14 S.Ct. 4, 37 L.Ed. 986. These subsequent awards and the appeals based thereon are pending in this court in two separate cases, No. 26,479 and No. 26,711, under the name and style of **Massachusetts Mutual Life Insurance Company v. Brock, as Trustee, etc.**

The record in No. 26,479 indicates that fees were awarded the trustee for the period January 1, 1967-June 30, 1967 in the amount of $27,500 at an hourly rate of approximately $45.00 for a total of 607 hours. Counsel was awarded $35,000 at the approximate rate of $89.50 per hour for 391 hours. In No. 26,711, the trustee was awarded $35,580. for 702 hours spent on the affairs of the debtors during the period June 30, 1967-June 30, 1968. For the same period his counsel was awarded $69,000 for 1,287 hours. No. 26,711 also involves an order wherein the District Court aggregated all of the interim fees awarded

to the trustee and his counsel (excluding the receivership) so that they averaged some $40.00 per hour for the trustee and $59.00 per hour for his counsel.

Taking all of these interim awards into consideration, including fees for the receivership, it appears that the total compensation awarded for the period February 8, 1966-June 30, 1968 was as follows:

| | Hours | $ Received | Hourly Rate |
|---|---|---|---|
| Brock | 2,414.5 | $109,080 | $45.1 |
| Wolff | 2,394.5 | 161,500 | 67.4 |
| Total | | $270,580 | |

We also know from the record in the case before us and from the records in the subsequent appeals that the liquidation of the debtor corporation is almost complete. As noted, Dania and Lake Worth have been virtually liquidated. The Wingreen Co. formerly owned and/or operated four motels, an office building, a warehouse building, and four apartment buildings. It also owned vacant lands. Most of these properties were heavily encumbered. All have now been liquidated or lost through sale or foreclosure or abandonment except the Ramada Inn at Cocoa Beach, Florida. That property is subject to first, second, third and fourth mortgages. The first mortgage is to secure a debt due appellant in excess of $1,000,000. The other three mortgages are to secure debts totaling $1,390,000, including interest, as of October 1, 1968. This property was appraised for appellant in 1966 as having a value of $1,500,000. The trustee has obtained an appraisal as of April 1, 1968 of $2,200.000.

According to a report filed by the trustee, the Ramada Inn was operated at a profit of only $50,900.88 during the first nine months of 1968. The same report shows that the trustee has unrestricted cash available of only $96,029.83 as of September 30, 1968.

The record discloses that the claims of unsecured creditors totaled $1,385,713.95 as of January 25, 1966. In discussing a proposed plan of reorganization, the trustee advised the court on December 30, 1966 that there were no stockholder equities to be dealt with and that "... there is little which the unsecured creditors may expect." We have found nothing in the records before us to indicate any change in this prognistication. The trustee hopes to realize something from a tax loss carry forward, subject to a ruling by the Internal Revenue Service. There is some tag end litigation which may produce assets for the debtors but what is realized, if anything, will not greatly exceed the administrative expenses.

It is apparent that the trustee and his counsel have rendered and are rendering valuable and almost daily services in connection with these Chapter X proceedings. These services have involved complex legal and business matters and we in no way disparage them. The fact remains, however, that they have been more than amply compensated for their services under the circumstances of these Chapter X proceedings.

The trustee, as previously stated, has received compensation for the period February 8, 1966-June 30, 1968, a period of some 29 months, in the amount of $109,080 free of overhead. His compensation has been at the hourly rate of $45.00. We conclude that this is excessive. The

trustee has been compensated for services taking little more than half his time at a rate of almost $50,000 per annum.

With respect to counsel, we hold that his fees are also excessive. He has been compensated at the rate of approximately $67.00 per hour during the same period. His total compensation has been $161,500 for little more than half time service or at a rate of more than $65,000 per annum. He is a sole practitioner and these services have been rendered entirely by him, and, of course, he has overhead expense.

There is opinion evidence before the court that the services of counsel were reasonably worth $50.00 per hour. There is some evidence that one Miami practitioner charges $80.00 per hour for his services in some matters and his view was that counsel for the trustee has been underpaid. There is no evidence as to the reasonable value of the services rendered by the trustee save his own statements. The absence of evidence, however, in fee matters is not a deterrent to the court of appeals reaching a conclusion that the fees were excessive. Judge Sibley speaking for this court in **Campbell v. Green**, supra, a case involving an appeal from orders allowing fees in a corporate reorganization, said with respect to the amount of fees to be awarded:

> "The court, either trial or appellate, is itself an expert on the question and may consider its own knowledge and experience concerning reasonable and proper fees and may form an independent judgment either with or without the aid of testimony of witnesses as to value..."

We conclude that the order under consideration must be reversed and the matter remanded to the District Court for reconsideration of the amounts awarded to the trustee and his counsel as fees. We conclude also that the fees to be awarded to the trustee shall not exceed $25.00 per hour for his services during the period covered by the order and that the fees to be awarded counsel for the trustee shall not exceed $50.00 per hour for the same period.

It is to be noted that the court is also this day reversing the orders complained of in No. 26,479 and No. 26,711, supra. The District Court will be in a better position to award fees upon considering the entire course of the proceedings than was the case in the several interim awards. In any event we do not believe fees above the stated amounts of $25.00 per hour and $50.00 per hour for the trustee and his counsel, respectively, can be justified for the services rendered under the circumstances of these Chapter X proceedings.

REVERSED and REMANDED with directions.

## APPENDIX
## B

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

---

**No. 26,479**

---

In the Matter of: THE WINGREEN COMPANY
MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY,

*Appellant,*

*vs.*

J. H. BROCK, Trustee,

*Appellee.*

---

**No. 26,711**

---

In the Matter of: THE WINGREEN COMPANY
MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY,

*Appellant,*

*vs.*

J. H. BROCK, Trustee,

*Appellee.*

---

**Appeals from the United States District Court for the Southern District of Florida**

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**(December 5, 1968)**

Before GEWIN, BELL and DYER, Circuit Judges.

PER CURIAM: These appeals involve orders allowing fees for the trustee and his counsel in Chapter X proceedings under the Bankruptcy Act for the periods January 1, 1967-June 30, 1967; June 30, 1967-June 30, 1968; and May 24, 1966-June 30, 1968. The appeals present the same questions as were presented in **Massachusetts Mutual Life Insurance Company v. Brock**, 5 Cir. 1968, ____ F.2d_____, [No. 25,303, slip opinion dated December ____, 1968]. The orders are reversed for the reasons stated in that case.

The District Court is directed to reconsider the request for fees for the stated periods. The order in No. 26,479, dated February 19, 1968, involves the period January 1, 1967-June 30, 1967. It so happens that the order in No. 26,711, dated August 6, 1968, involves the entire period of trusteeship (Receivership period excluded) through June 30, 1968. Thus it is that the fees for the period May 24, 1966-June 30, 1968, including the periods involved in No. 25,303 and No. 26,479 must be reconsidered. The facts and circumstances of these reorganization proceedings will not warrant the fees in excess of $25.00 per hour for the trustee and $50.00 per hour for counsel for this period.

REVERSED and REMANDED with directions.

## APPENDIX
## C

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

---

**No. 25,303**

---

MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY, A Massachusetts Corporation,
and
COLLEGE INN, INC., a Florida Corporation,
Appellants,

versus

J. H. BROCK, as Trustee for the Wingreen Company, a Florida corporation; The Dania Corporation, a Florida corporation; and The Lake Worth Company, a Florida corporation,
Appellee.

---

**Appeal from the United States District Court for the Southern District of Florida**

---

Before RIVES and DYER, Circuit Judges, and JOHNSON, District Judge.

BY THE COURT:

The joint petition for leave to take an interlocutory appeal from the orders of the United States District Court entered in the captioned cause is hereby GRANTED

The motion filed by appellees to dismiss the appeal is DENIED

The motion of appellants to require appellees to diminish their designation of the record on appeal is GRANTED

(original filed — June 15, 1967)

APPENDIX
D

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

---

No. 25,303

---

MASSACHUSETTS MUTUAL LIFE
INSURANCE COMPANY,
and
COLLEGE INN, INC.,
*Appellants,*

*vs.*

J. H. BROCK, as Trustee of
THE WINGREEN COMPANY, ET AL,
*Appellees.*

---

**Appeal from the United States District Court for the Southern District of Florida**

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ORDER:

IT IS ORDERED that the joint motion of the parties to dispense with the printing of the record on appeal, in the above styled and numbered cause be, and the same is hereby granted upon the condition that the parties are directed to prepare and file a reproduced joint appendix of such portions of the record as relate to the issues to

be decided on appeal. Briefs shall be prepared and filed pursuant to Rule 24(a)(2) with the reproduced joint appendix to be filed within twenty (20) days after the filing of the brief of the appellee.

/s/WALTER P. GEWIN

*United States Circuit Judge*

(original filed — October 19, 1967)

APPENDIX
E

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

---

No. 25,303

---

MASSACHUSETTS MUTUAL LIFE
INSURANCE COMPANY
and
COLLEGE INN, INC.

*Appellants,*

*vs.*

J. H. BROCK, as Trustee of
THE WINGREEN COMPANY, ET AL,

*Appellees.*

---

**Appeal from the United States District Court for the Southern District of Florida**

---

Before TUTTLE, WISDOM and GEWIN, Circuit Judges.

BY THE COURT:

IT IS ORDERED that the motion of appellee to dismiss the above entitled and numbered cause for lack of jurisdiction be, and the same is hereby carried with the case.

IT IF FURTHER ORDERED that the motion of appellee to strike and correct the brief of appellant be, and the same is hereby DENIED.

IT IS FURTHER ORDERED that the motion of appellee to summarily determine the appeal be, and the same is hereby DENIED.

IT IS FURTHER ORDERED that the request of appellant for an order that the joint appendix be limited to the portions of the record which are related to matters which are directly referred to in the briefs of counsel be, and the same is hereby GRANTED.

(Original filed — February 2, 1968)

**APPENDIX**
**F**

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

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**No. 25,303**

---

MASSACHUSETTS MUTUAL LIFE
INSURANCE COMPANY
and
COLLEGE INN, INC.,
*Appellants,*

*vs.*

J. H. BROCK, as Trustee of
THE WINGREEN COMPANY, ET AL,
*Appellees.*

---

**Appeal from the United States District Court for the Southern District of Florida**

---

Before RIVES, GEWIN and THORNBERRY, Circuit Judges.

BY THE COURT:

IT IS ORDERED that the motion of appellant to strike certain items which have been designated by the appellee to be printed in the Joint Appendix in the above entitled and numbered cause be, and the same is hereby GRANTED provided that if at the time of the hearing of this appeal or thereafter it appears to the Court that anything material to either party is omitted from the Joint Appendix this Court on a proper suggestion or of its own initiative may direct that the omission shall be corrected by requiring the Clerk of the District Court to forward such necessary documents and papers to the Clerk of this Court; and if necessary, that a supplemental appendix or record shall be certified and transmitted by the Clerk of the District Court to this Court.

(Original filed — February 29, 1968)

# APPENDIX
# G

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

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**Misc. No. 1,006, 26,479**

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MASSACHUSETTS MUTUAL LIFE
INSURANCE COMPANY,

*Appellant,*

*vs.*

J. H. BROCK, ETC., ET AL,

*Appellees.*

---

**Appeal from the United States District Court for the Southern District of Florida**

---

Before THORNBERRY, AINSWORTH and SIMPSON, Circuit Judges.

BY THE COURT:

IT IS ORDERED that appellant's suggestion and motion for the entry of an order to require the appellees to diminish the designations of contents of the record to be prepared on appeal, filed in the above styled and numbered cause, is hereby granted, the Court finding that the appellant's designations (together with the appendix printed in No. 25,303 pending herein) are sufficient for review of the questions involved on this appeal.

(Original filed — June 25, 1968)

## APPENDIX H

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

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**No. 26,479**

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In the Matter of: THE WINGREEN COMPANY
MASSACHUSETTS MUTUAL LIFE
INSURANCE COMPANY,

*Appellant,*

*vs.*

J. H. BROCK, Trustee,

*Appellee.*

---

**Appeal from the United States District Court for the Southern District of Florida**

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ORDER:

IT IS ORDERED that the petition of appellee to supplement the record filed in the above entitled and number cause be and the same is hereby granted.

/s/DAVID W. DYER

*United States Circuit Judge*

(Original filed — September 3, 1968)

# APPENDIX
# I

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

---

**No. 26,479**

---

In the Matter of: THE WINGREEN COMPANY
MASSACHUSETTS MUTUAL LIFE
INSURANCE COMPANY,

*Appellant,*

*vs.*

J. H. BROCK, Trustee

*Appellee.*

---

**Appeal from the United States District Court for the Southern District of Florida**

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ORDER:

IT IS ORDERED that the petition of appellant to supplement the record filed in the above entitled and numbered cause be, and the same is hereby granted.

/s/DAVID W. DYER

*United States Circuit Judge*

(Original filed September 3, 1968)

## APPENDIX
## J

IN THE UNITED STATES DISTRICT COURT IN AND FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

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**No. 66-28-Bk-WM**

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In the Matter of: THE WINGREEN COMPANY,
*Debtor.*

ORDER GRANTING LEAVE TO TRUSTEE TO SEEK A WRIT OF CERTIORARI IN THE SUPREME COURT OF THE UNITED STATES ADDRESSED TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

This matter coming before this Court to be heard on the sworn Petition of J. H. Brock, Trustee of The Wingreen Company, a Florida corporation, the Dania Corporation, a Florida corporation, and The Lake Worth Company, a Florida corporation, and Irving M. Wolff, as his attorney, seeking this Court's approval for leave by said parties to prosecute in the Supreme Court of the United States a petition for certiorari addressed to the United States Court of Appeals for the Fifth Circuit, and further representing to this Court that these estates shall not be burdened with the expenditure of any expenses and costs in connection therewith, and it appearing that this order may be entered ex parte without notice, it is

ORDERED that J. H. Brock, as Trustee for The Wingreen Company, The Dania Corporation, and The Lake Worth Company, and Irving M. Wolff, as his attorney in said causes, be and they are hereby authorized in their

respective names and in their official capacities as Trustee and attorney for the Trustee for the respective estates, to prosecute a petition seeking a writ of certiorari in the Supreme Court of the United States addressed to the United States Court of Appeals for the Fifth Circuit in the following matters lately pending in said United States Court of Appeals for the Fifth Circuit, to wit: "Massachusetts Mutual Life Insurance Company, et al., v. J. H. Brock, Trustee, etc.", No. 25303, and the consolidated cases "Massachusetts Mutual Life Insurance Company, et al. v. J. H. Brock, Trustee, etc.", Nos. 26479 and 26779.

IT IS FURTHER ORDERED that all expenses and costs involved in said proceedings are to be borne by the respective J. H. Brock, Trustee, and Irving M. Wolff, and no administrative or other charge thereof shall be made to the respective estates in these proceedings.

IT IS FURTHER ORDERED that J. H. Brock as Trustee, and Irving M. Wolff, as attorney for the Trustee for said Debtors, shall not be paid, nor will they be entitled to be paid any fees in connection with the authorized litigation. It is the expressed intention that the instant estates shall not be burdened with any charges whatsover whether costs, expenses and fees, in connection with the proceedings authorized to be undertaken in the Supreme Court of the United States.

DATED at Miami, Florida this 16th day of January, 1969.

/s/W. O. MEHRTENS

*United States Circuit Judge*

## APPENDIX K

[ORDER ENTERED January 30, 1967, United States District Court, Southern District of Florida; United States Court of Appeals, Fifth Circuit Cause No. 25303]

IN THE UNITED STATES DISTRICT COURT IN AND FOR THE SOUTHERN DISTRICT OF FLORIDA MIAMI DIVISION

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No. 66-28-Bk-WM
66-29-Bk-WM
66-30-Bk-WM

---

In the Matter of:
THE WINGREEN COMPANY,

Debtor.

---

In the Matter of:
THE DANIA CORPORATION,

Debtor.

In the Matter of:
THE LAKE WORTH COMPANY,

Debtor.

---

### ORDER AWARDING ADDITIONAL INTERIM FEES TO THE TRUSTEE AND HIS ATTORNEY

On May 23, 1966, by Court Order, J. H. Brock was appointed Trustee for The Wingreen Company, a Florida corporation, Debtor; The Dania Corporation, a Florida corporation, Debtor; and The Lake Worth Company, a

Florida corporation, Debtor in these consolidated proceedings, and in accordance with this Court's Order of May 23, 1966 did qualify as Trustee by posting and bond required in the Order of appointment, and he has been, since May 24, 1966, and at all times pertinent thereafter, the duly acting and qualified Trustee of the three debtor estates in these consolidated proceedings.

This Court by its Order of May 24, 1966 did appoint Irving M. Wolff attorney for the said Trustee of the three Debtor corporations in these consolidated proceedings, and the said Irving M. Wolff did file the necessary affidavits required under the pertinent sections of the Bankruptcy Act, including Chapter X—corporate reorganization applicable, and since May 24, 1966, and at all times material herein, he has represented the said J. H. Brock, Trustee for the three Debtors in these consolidated proceedings as an attorney at law in accordance with the Order of his appointment.

The Trustee, J. H. Brock has filed his Petition for an award of additional interim compensation and reimbursement of disbursements in accordance with the applicable sections of the Acts of Congress relating to Bankruptcy, and in accordance with local Rule 10(g), Bankruptcy Rules of the District Court of the United States for the Southern District of Florida, for the services performed as Trustee for and on behalf of the three Debtors in these consolidated proceedings for the interval commencing with the date of September 1, 1966 to and including the 31st day of December, 1966.

Irving M. Wolff, the Trustee's attorney in these consolidated proceedings, representing the Trustee in his

capacity as Trustee of the three debtor estates, in accordance with the foregoing statutory and procedural citation, did also file his application for an award of additional interim attorney's fees for the same period of time involved as that included in the Trustee's Petition for compensation and reimbursement of expenditures.

It appearing from the record that due and sufficient notice of said hearing for the application of interim fees was given to all parties materially and adversely affected by these proceedings, and to such parties of record that this Court has designated as being entitled to receive copies of all pleadings, and subsequent to the notice two parties materially and adversely affected by these proceedings did file written objections to the Petitions filed by the Trustee and by the Attorney for the Trustee seeking interim fees for the period involved, said parties being Massachusetts Mutual Life Insurance Company, and College Inn.

Neither of the objectors did take into consideration the value of the services rendered by the Trustee and his attorney in connection with the complicated and difficult sale of the holdings of the Dania Corporation, a Debtor in these consolidated proceedings, specifically the stock in the Dania Bank. The liquidation of these particular assets resulted in a transaction in excess of $4,000,000.00 and resulted in the consolidated proceedings realizing in excess of $100,000.00 in cash.

The Court finds that the services rendered in this regard which commenced with an offer by the eventual purchaser whereby the consolidated estates would have been required to pay to the purchaser some $6,000.00 cul-

minated in a transaction as herinbefore observed, netting the estate not only the cash in excess of $100,000.00, but unburdened the estate of some $250,000.00 per year of interest charges, in addition to the dismissal of a complicated proceeding involving three Orders heretofore entered by this Court, which appeals properly defended would create sizeable administrative expenditures which the consolidated proceedings would have to bear. This savings must be considered sizeable when the Appellate record therefor prepared was stipulated to, and directions were submitted to the Appellate Court Clerk by Counsel for the intended Appellant and Trustee, which withheld instructions directing the Appellate Court Clerk to bind the record pending the negotiations involving the sale.

This Court further finds that the hourly expenditure of time is only one of the factors which governs an allowance of fees in reorganization proceedings. This is only an indication of time expended by the applicant. This factor alone is not the sole controlling item. The expenditure of time must be coupled with the results obtained. In these consolidated proceedings the Trustee has within his jurisdiction the management and operation of two motels, one office building, four apartment houses, a warehouse, and several parcels of unimproved property. At the inception of the proceedings the Trustee had the controlling stock interest of a national bank, and the controlling stock interest in a state bank within his custody.

In accordance with the reports filed by the Trustee under Section 167 of the Bankruptcy Act [11 U.S.C.A. § 567] the total evaluation of the consolidated estates

was in the neighborhood of $20,000,000.00, and the monthly reports filed by the Trustee reveal that the total gross annual business done by the properties in his custody and under his supervision on an annual basis grossed more than $3,000,000.00 per annum.

The Trustee is the sole executive under whose active management these properties are operated. The Court must take into consideration the executive ability of the Trustee, in addition to the hours expended, the monies the Trustee handles, and the dispatch in which decisions are made, and the activities of the Trustee in the preservation of the assets.

At the commencement of these consolidated proceedings, the records of the Debtors were in a deplorable condition. That through the efforts of the Receiver, J. H. Brock, now the Trustee, J. H. Brock, an efficient administrative system was created which allowed this Court to have at its disposal all of the necessary financial data and reports to assist this Court in making the decisions necessary in these complicated reorganization proceedings. It was through the efforts of this Trustee that the estate at the present time is in a position to be reorganized, and there are prospective investors who are interested in reorganization, and these investors have at their disposal because of the Trustee's efforts, detailed and minute financial information and information advising them as to the claims of all secured creditors and unsecured creditors. Where the secured creditors are involved, these people have available to them enumerations as to the types of liens on the specific properties, whether they be real or personal; they have available to them each facet that is necessary to allow them to make not only

a decision as to the possibility of participation in reorganization, but as to the future recapitalization of the facilities and assets to be utilized in reorganization.

At the commencement of these consolidated proceedings, there was little or no cash position available to the estates, and yet the Receiver, J. H. Brock, now the Trustee, J. H. Brock, through diligent application has discharged portions of the secured indebtedness, portions of the current taxes, and all of the operational expenses of the estate without the necessity of any borrowings, specifically no certificate of indebtedness having been issued by the Trustee to accomplish this facet of the administration.

This type and calibre of service must also be considered in the establishment of fees.

## CONCLUSIONS OF LAW

That under the applicable provisions of the Bankruptcy Act dealing with reorganizations, this Court does have the jurisdiction to allow interim fees in accordance with the services rendered as they benefit the estate. It is therefore

ORDERED:

1. That the said J. H. Brock, as Trustee of the Wingreen Company, the Dania Corporation, and The Lake Worth Company, Debtors in these consolidated proceedings, be and he is hereby awarded $20,000.00 as allowance for compensation for the interim period commencing September 1, 1966 and concluding December 31, 1966, for

the said services so rendered during said period in these consolidated proceedings as Trustee of the hereinbefore enumerated Debtors.

2. That the enumerated disbursements as exhibited by Exhibit B attached to the Petition of the said J. H. Brock for reimbursement of out-of-pocket expenses as Trustee during the interval of September 1, 1966 through December 31, 1966 in the amount of $36.55 be allowed, and that said expenditures are approved as reported, and that they shall be taxed as administrative costs in these proceedings.

3. That Irving M. Wolff as attorney for the Trustee J. H. Brock, in these consolidated proceedings be and he is hereby awarded $25,000.00 for the legal services rendered by the said Irving M. Wolff in accordance with the Order appointing him under a general retainer as attorney for the said Trustee, J. H. Brock, in these consolidated proceedings, for the interim period commencing September 1, 1966 and terminating December 31, 1966.

4. The foregoing fees awarded to the Trustee and to his attorney in these consolidated proceedings are on an interim basis and such awards will be taken into consideration at the time of the final award of fees and compensation for the Trustee and his attorney in these consolidated proceedings.

5. That the said J. H. Brock, Trustee in these consolidated proceedings, prior to his payment and discharge of said awards, shall satisfy himself that all parties awarded compensation and allowance and reimbursement of costs have filed their respective affidavits as required by Section 249 of the Bankruptcy Act [11 U.S.C.A. § 649].

6. That the said Trustee, within twenty (20) days from the entry of this Order, shall mail a copy hereof to all creditors and stockholders of the said foregoing and enumerated Debtors in these consolidated proceedings as the same are reflected by the records of the said respective Debtors now in the possession of the said Trustee.

7. That all of the allowances for compensation and fees are for services rendered during the period set forth in the respective applications and hereinbefore provided for in this Order in conjunction with the administration of the instant Debtor estates in these consolidated proceedings, and that of said compensation allowances, fees and reimbursements for expenditures are reasonable and that the said awards are hereby allowed in payment on an interim basis for such services rendered, and the said Trustee, J. H. Brock, in these consolidated proceedings is hereby authorized to make the same.

DONE and ORDERED, at Miami, Florida, this 30th day of January, 1967.

/s/ W. O. MEHRTENS
UNITED STATES DISTRICT JUDGE

## APPENDIX
## L

[ORDER ENTERED February 19, 1968, United States District Court, Southern District of Florida; United States Court of Appeals, Fifth Circuit Cause No. 26479]

IN THE UNITED STATES DISTRICT COURT IN AND FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

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**No. 66-28-Bk-WM**

**66-29-Bk-WM**

**66-30-Bk-WM**

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In the Matter of:
THE WINGREEN COMPANY,

Debtor.

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In the Matter of:
THE DANIA CORPORATION,

Debtor.

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In the Matter of:
THE LAKE WORTH COMPANY,

Debtor.

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**ORDER AWARDING ADDITIONAL INTERIM FEES TO THE TRUSTEE AND HIS ATTORNEY**

On May 23, 1966, by Court Order, J. H. BROCK was appointed Trustee for The Wingreen Company, a Florida corporation, Debtor; The Dania Corporation, a Florida corporation, Debtor; and The Lake Worth Company, a Florida corporation, Debtor, in these consolidated proceedings, and in accordance with this Court's Order of May 23, 1966 did qualify as Trustee by posting the bond required in the Order of appointment, and he has been, since May 24, 1966, and at all times pertinent thereafter, the duly acting and qualified Trustee of the three debtor estates in these consolidated proceedings.

This Court by its Order of May 24, 1966, did appoint IRVING M. WOLFF attorney for the said Trustee of the three Debtor corporations in these consolidated proceedings, and the said IRVING M. WOLFF did file the necessary affidavits required under the pertinent sections of the Bankruptcy Act, including Chapter X—corporate reorganization applicable, and since May 24, 1966 and at all times material herein, he has represented the said J. H. BROCK, Trustee for the three Debtors in these consolidated proceedings as an attorney at law in accordance with the Order of his appointment.

The Trustee, J. H. BROCK, has filed his Petition for an award of additional interim compensation and reimbursement of disbursements in accordance with the applicable sections of the Acts of Congress relating to Bankruptcy, and in accordance with local Rule 10(g), Bankruptcy Rules of the District Court of the United States for the Southern District of Florida, for the services performed as Trustee for and on behalf of the three Debtors in these consolidated proceedings for the interval commencing with the date of January 1, 1967 to and including the 30th day of June, 1967.

IRVING M. WOLFF, the Trustee's attorney in these consolidated proceedings, representing the Trustee in his capacity as Trustee of the three debtor estates, in accordance with the foregoing statutory and procedural citation, did also file his application for an award of additional interim attorney's fees for the same period of time involved as that included in the Trustee's Petition for compensation and reimbursement of expenditures.

It appearing from the record that due and sufficient notice of said hearing for the application of interim fees was given to all parties materially and adversely affected by these proceedings, and to such parties of record that this Court has designated as being entitled to receive copies of all pleadings, and subsequent to the notice one party materially and adversely affected by these proceedings did file written objections to the Petitions filed by the Trustee and by the Attorney for the Trustee seeking interim fees for the period involved, said party being MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY.

The objector did not take into consideration the value of the services rendered by the Trustee and his attorney in connection with the complicated and difficult litigation concerning the claims of liens involving the estates' interest in the Ramada Inn, Gainesville, Florida. This litigation was complicated and lengthy, and the estates' equity in the leasehold interest was enhanced by approximately $689,000.00, inasmuch as some sixteen claimants seeking a secured position against the estates' leasehold interest had their claims reclassified as unsecured claims. In addition thereto, the first mortgagee's claim as to principal was recommended for reduction by the Special Master by an amount of $173,000.00.

As a result of this particular litigation and the hearings conducted in connection with evaluation of secured claims under Section 197 of the Bankruptcy Act [11 U.S.C.A. § 597] it appears that a valuable asset of the estates was preserved to enable the Trustee to resurrect some consideration and to liquidate said asset so that the estates would resolve themselves into a reorganization of the remaining property in Cocoa Beach, Florida.

The objector presents no testimony or evidence to aid and assist this Court in reaching its determination. It does, however, attach an affidavit of a practitioner, and from the contents of said affidavit it does not appear that the said affiant is fully familiar with the proceedings or that he was given much time, nor is his conclusion as to the value of the services acceptable to the Court.

The Court has heard from counsel in these proceedings, and is fully familiar from its own experience with the matters and the complexity of the proceedings involved as to fully and completely evaluate the services rendered by the Trustee and his attorney.

While the objector makes a severe issue that no Plan of Reorganization has been proposed, and he erroneously concludes that no Plan of Reorganization will be proposed, this Court, because of its direct and minute supervision of the instant estates, is apprised of factual material which refutes the inferred conclusion of the particular objector.

The inconsistencies of the petition and the conclusions therein contained reveal that the objector is unfamiliar with the total ramifications of these proceedings.

While the objector complains that 1967 real and personal property taxes which are now due and owing have not been paid, and he does recognize that said expenses are an administrative matter, the objector fails to recognize that the fees earned by the Trustee and his attorney are also administrative expenses. It appears that this particular creditor feels that the administration of these instant estates should be for its sole benefit, and that anything that conflicts therewith should be stricken down.

It must be pointed out that the argument made by the objector as to the failure to file a Plan of Reorganization should have some effect upon the fees, the law is to the contrary, inasmuch as a trustee under the provisions of the Bankruptcy Act where reorganization is not affected, the provisions for remuneration of the Trustee are governed by the first seven chapters of the Bankruptcy Act [11 U.S.C.A. § 647].

The case law relied upon by the objector cites vintage cases (one case being decided in 1953 and the other in 1957, which do not give any consideration to the span of time and changing economic conditions).

This Court further finds that the hourly expenditure of time is only one of the factors which governs an allowance of fees in reorganization proceedings. This is only an indication of time expended by the applicant. This factor alone is not the sole controlling item. The expenditure of time must be coupled with the results obtained. In these consolidated proceedings the Trustee has within his jurisdiction the management and operation of two motels, one office building, four apartment

houses, a warehouse, and several parcels of unimproved property. At the inception of the proceedings the Trustee had the controlling stock interest of a national bank, and the controlling stock interest in a state bank within his custody.

The objector's conclusions to the contrary notwithstanding, the reports of the Trustee reflect that the annual gross business being done by the properties in his custody and his supervision has been increased for the period under consideration when compared to the previous period, particularly that as to the motels the operation of the business shows an increase of room sales of some 4,000 rooms over the same period of time involved in the preceeding year, and for the same period there was a gross revenue increase of some $34,000.00 when compared with the previous year. The Trustee's business policies resulted in considerable savings, and increased gross revenues and eliminated operating losses.

The Trustee is the sole executive under whose active management these properties are operated. The Court must take into consideration the executive ability of the Trustee, in addition to the hours expended, the monies the Trustee handles, and the dispatch in which decisions are made, and the activities of the Trustee in the preservation of the assets.

It is apparent that the attorney for the Trustee has been conscientious and has exhausted every avenue in handling the legal problems presented in the administration of these estates to safeguard every asset of these estates, and has kept the Court, as well as the Trustee, fully informed as to the legal developments with which the administration of the estates was faced.

The Court has reviewed the applications of the Trustee and his attorney for a further award of interim fees, and no creditor having filed any constructive objection to said application, nor put in issue any sworn allegation therein contained, the contents of both petitions must be taken to be factually correct, and as such are found to be so, and the facts therein contained are incorporated herein in **haec verba** as though fully set forth.

## CONCLUSIONS OF LAW

This Court concludes as a matter of law that it has jurisdiction to allow interim fees in accordance with the services rendered, and in accordance with the doctrine established by the United States Court of Appeals for the Fifth Circuit, the Court recognizes from its own experience that it may form an independent judgment as to the value of fees in accordance with the services rendered and the achievements gained, with or without the aid of testimony of witnesses to establish said value [**Campbell v. Green**, 112 F.2d 143]. It is therefore

ORDERED:

1. That the said J. H. BROCK, as Trustee of The Wingreen Company, The Dania Corporation, and The Lake Worth Company, Debtors in these consolidated proceedings, be and he is hereby awarded $27,500.00 as allowance for compensation for the interim period commencing January 1, 1967 and concluding June 30, 1967, for the said services so rendered during said period in these consolidated proceedings as Trustee of the hereinbefore enumerated Debtors.

2. That the enumerated disbursements as exhibited by Exhibit B attached to the Petition of the said J. H. BROCK for reimbursement of out-of-pocket expenses as Trustee during the interval of January 1, 1967 through June 30, 1967 in the amount of $74.60 be allowed, and that said expenditures are approved as reported, and that they shall be taxed as administrative costs in these proceedings.

3. That IRVING M. WOLFF, as attorney for the Trustee J. H. BROCK in these consolidated proceedings, be and he is hereby awarded $35,000.00 for the legal services rendered by the said IRVING M. WOLFF in accordance with the Order appointing him under a general retainer as attorney for the said Trustee, J. H. BROCK, in these consolidated proceedings, for the interim period commencing January 1, 1967 and terminating June 30, 1967.

4. The foregoing fees awarded to the Trustee and to his attorney in these consolidated proceedings are on an interim basis and such awards will be taken into consideration at the time of the final award of fees and compensation for the Trustee and his attorney in these consolidated proceedings.

5. That the said J. H. BROCK, Trustee in these consolidated proceedings, prior to his payment and discharge of said awards, shall satisfy himself that all parties awarded compensation and allowance and reimbursement of costs have filed their respective affidavits as required by Section 249 of the Bankruptcy Act [11 U.S.C.A. § 649].

6. That the said Trustee, within twenty (20) days from the entry of this Order, shall mail a copy hereof to all creditors and stockholders of the said foregoing and enumerated Debtors in these consolidated proceedings as the same are reflected by the records of the said respective Debtors now in the possession of the said Trustee.

7. That all of the allowances for compensation and fees are for services rendered during the period set forth in the respective applications and hereinbefore provided for in this Order in conjunction with the administration of the instant Debtor estates in these consolidated proceedings, and that of said compensation allowances, fees and reimbursements for expenditures are reasonable and that the said awards are hereby allowed in payment on an interim basis for such services rendered, and the said Trustee, J. H. BROCK, in these consolidated proceedings is hereby authorized to make the same.

DONE and ORDERED, at Miami, Florida, this 19th day of February, 1968.

/s/ W. O. MEHRTENS

UNITED STATES DISTRICT JUDGE

## APPENDIX M

[ORDER ENTERED August 6, 1967, United States District Court, Southern District of Florida; United States Court of Appeals, Fifth Circuit Cause No. 26711]

IN THE UNITED STATES DISTRICT COURT IN AND FOR THE SOUTHERN DISTRICT OF FLORIDA MIAMI DIVISION

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No. 66-28-Bk-WM
66-29-Bk-WM
66-30-Bk-WM

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In the Matter of:

THE WINGREEN COMPANY,

Debtor.

### ORDER AWARDING ADDITIONAL INTERIM FEES TO THE TRUSTEE AND HIS ATTORNEY

On May 23, 1966, by Court Order J. H. BROCK was appointed Trustee for The Wingreen Company, a Florida corporation, Debtor.

He was also appointed Trustee for the Dania Corporation, and The Lake Worth Corporation, also Florida corporations. The proceedings were consolidated. However, heretofore this Court has entered Orders awarding interim allowances to the Trustee and his attorney, and it further did enter an Order apportioning the respective

administrative charges amongst the various estates and the necessary payments were made and credits and debits achieved amongst the respective estates.

This Court is fully advised as to the status of the causes, the interrelationship of the estates, and the services rendered. The record reflects that the Trustee did post bond and qualify for his office on May 24, 1966, and at all times pertinent thereafter he was the duly qualified and acting Trustee, in accordance with the Order of this Court in these proceedings.

On May 24, 1966, this Court by its Order of instant date did appoint IRVING M. WOLFF attorney for the said Trustee in these consolidated matters.

The record further reflects that the Trustee and his attorney have made an application for interim fees for the entire period of time of their appointment, and did file the necessary affidavits required under the pertinent sections of the Bankruptcy Act, including Chapter X corporate reorganization provisions, and that at all times material herein, the said IRVING M. WOLFF did represent the Trustee J. H. BROCK and did perform the necessary services.

The Trustee, J. H. BROCK, has filed his Petition for an award of interim compensation asking that this Court review from the date of his appointment, May 24, 1966, to and including the 30th day of June, 1968, the status of interim allowances heretofore made to the Trustee and credit said interim allowances to any interim fees which this Court may award for the entire period of the trusteeship, and should any deficiency appear in the payment of said fees, enter an Order accordingly.

IRVING M. WOLFF, the Trustee's attorney in these proceedings, did also file a similar Petition and both applications are accompanied by the required Affidavits under the Bankruptcy Act and Local Rule 10C, Bankruptcy Rules of the United States for the Southern District of Florida. The Petitions were duly and properly served on all parties adversely affected under the date of July 18, 1968, in accordance with the Certificate of Service filed in these proceedings by the Trustee and countersigned by his attorney.

The notice given was adequate and in accordance with this Court's rulings.

The record reflects that the Trustee did expend 2,414 hours and 30 minutes, and the Trustee did take into his possession assets evaluated at $17,931,973.89. That at the present time he retains possession of assets evaluated at $2,200,000.00. That in addition to the foregoing assets, the Trustee has in the disposition of the business of the estates handled $6,154,708.63 from the date of his appointment as Trustee to and including June 30, 1968. That $502,664.84 represented proceeds from disposals of debtor's assets which in effect were utilized in the administration of the estates, enabling secured creditors to have their secured status maintained and protected, and to further afford unsecured creditors the possibility of participation in distribution in reorganization. It thus appears that the Trustee did handle in excess of $23,000,000.00 in assets and cash during his administration.

By previous Order of Court, the Trustee has been awarded $61,000.00 for and on account of interim fees for services rendered in these proceedings as Trustee. This

Court has made no allowance to the Trustee for the period commencing with July 1, 1967 and ending June 30, 1968, a period in which the Trustee expended 1,054 hours and 30 minutes of the 2,414 hours and 30 minutes expended during the entire progress of these proceedings.

The Court is of the opinion that the value of the services rendered by the Trustee in these proceedings should be established on the basis of an hourly award involving the time expended, but that this award should also take into consideration the extraordinary responsibilities and the ability displayed by the Trustee in the management and conduct of the affairs of the said debtors and bringing order out of chaos. This Court has by its previous orders made observations as to the ability of the Trustee and the achievements that he has attained in the services rendered to this estate as an officer of this Court.

The attorney for the Trustee has filed his sworn Petition to which are attached minute schedules of the time expended by the attorney for the Trustee from the date of his appointment as such attorney to and including June 30, 1968. These schedules so filed and the testimony rendered reflect that the attorney for the Trustee has expended, since his appointment to and including said 30th day of June, 1968, 2,394 hours and 30 minutes, and he has received an interim allowance of fees for and on account of said services of $72,500.00. No award has been made for interim fees to the attorney for the Trustee for the period commencing July 1, 1967 and ending June 30, 1968, during which period of time the attorney for the Trustee did expend 1,605 hours and 15 minutes in these proceedings.

The Court is full well familiar with the services performed by the attorney for the Trustee and has commented on said services in the previous allowances for interim fees in these proceedings. The attorney for the Trustee has alleged in his sworn Petition that he did expend 95% of his time on matters of these estates during the period commencing January 1, 1967, to and including June 30, 1968. His practice has been limited because he is a single practitioner and due to the press of duties involved as attorney for the Trustee of the instant estates, he has discouraged and refused to take matters which have been tendered to him, thereby of necessity curtailing his practice. The Court must recognize also that the attorney for the Trustee, in the maintenance of his office, experiences an overhead.

A review of the application of the attorney for the Trustee reflects that he seeks to have established an hourly charge from the commencement of the appointment to and including June 30, 1968, and to award interim fees on the basis of said hourly rate and to credit against said figure any and all previous interim allowances heretofore made to the attorney for the Trustee. That should there be any deficiencies due and owing to the said attorney for the Trustee in accordance with said formula, then this Court shall enter such necessary Orders as it deems proper in its discharge of the said matter.

The record reflects that the attorney for the Trustee is now defending four appeals in the United States Court of Appeals for the Fifth Circuit. That he has matters of complicated nature involving the Internal Revenue Service of the United States of America before this Court in order to determine availability to a reorganized company

of various and divers tax losses under the tax loss carry forward provisions of the Internal Revenue Code. That he has plenary and/or summary lawsuits in progress to recover void or voidable preferences in an amount in excess of $600,000.00. That he further has had matters involving the obtaining of testimony from hesitant witnesses, and that he has exhausted every avenue in the handling of legal problems presented in the administration of the estates to safeguard every asset of the estates, and has kept the Court, as well as the Trustee, fully informed as to the legal developments with which the administration of the estates has been faced. In addition thereto, a Plan of Reorganization has been promulgated and presented to the Court, and the Court has directed the same to be forwarded to the Internal Revenue Service of the Treasury Department of the United States of America for its opinions.

Massachusetts Mutual Life Insurance Company filed objections to the last application made by the Trustee and his attorney for interim remuneration, and the Trustee filed a motion to strike portions of said objections, which motion was disposed of by an independent ruling entered by this Court.

The Trustee introduced testimony as to the reasonableness of his attorney's fees, calling to the witness stand an eminent practitioner before the courts of the State of Florida and the United States District Court for the Southern District of Florida, a past president of the local Bankruptcy Committee of this Court, senior partner of the law firm of Jepeway & Gassen, the Honorable LOUIS M. JEPEWAY. This witness testified that within his experience in bankruptcy proceedings, which dated

back to 1931, that a reasonable interim allowance for the attorney for the Trustee for the services rendered in a highly complicated and difficult administration during the interim period under consideration would be a minimum fee of $175,000.00 and a maximum of $200,000.00, based upon the size of the estates, the complexity of the matters and problems, the success in achieving ultimate ends, and the conscientious and direct effort expended by the attorney for the Trustee, in addition to the loss of practice sustained by said attorney because of his representation of the Trustee in this matter. Mr. JEPEWAY further testified to the methods utilized by attorneys in Dade County, Florida in setting fees and as to what the standards were. Mr. JEPEWAY, in his examination and cross examination, confirmed much of the independent judgment of the Court within its experience as to the setting of fees and as to the value in accordance with the services rendered and the achievements gained.

The objector presented no testimony other than the hereinbefore referred to objections and the alluded to rulings upon said objections.

This Court recognizes from the record that since July 1, 1967, the Trustee has either disposed of or abandoned under Order of this Court the following properties:

BANYAN ARMS APARTMENTS (August 30, 1967);

SUNNYBROOK APARTMENTS (September 20, 1967 — Condemnation)

BISCAYNE SHORES APARTMENTS (February 14, 1968)

RAMADA INN, GAINESVILLE (February 29, 1968)

THE LISCHKOFF PROPERTY — PENSACOLA (March 11, 1968)

THE HALLMARK PROPERTY — PENSACOLA (April 8, 1968)

THE COCOA BEACH 32-UNIT APARTMENTS (March 22, 1968)

THE EDGEWATER BUILDING (May 1, 1968)

THE GRAY PROPERTY — (May 3, 1968)

THE CORAL GABLES PROPERTY (May 10, 1968)

The Court does further recognize from the record, as hereinbefore stated, that the Trustee at the present time is engaged in prosecuting summary and plenary suits seeking to recover sums in excess of $600,000.00, and that in preparation for said proceedings a substantial amount of testimony and exhibits have been adduced under Sections 7a and 21a of the Bankruptcy Act, and by depositions. That the Trustee's paramount duty is one of total administration of all of the assets of the estate and preservation of choses in action, and each and every right of the estate. That the Trustee's duties cannot be minimized by the irresponsible conclusion contained in the objections filed by Massachusetts Mutual Life Insurance Company that the said Trustee is "a super manager". Such a conclusion reflects that the pleader is not fully and completely familiar not only with these proceedings but with the duties imposed upon a reorganization Trustee by the Bankruptcy

Act. Comment on this portion of the objections filed by Massachusetts Mutual Life Insurance Company cannot be concluded prior to the Court's making an additional observation that the said objector seeks to create the impression that the Trustee had little or nothing by way of property management to do, and therefore the Court has hereinbefore set forth the duties of liquidations of assets held by the Trustee in accordance with this Court's Orders. It does further appear that the objector is not cognizant of the impending proceedings directed to the Secretary of the Treasury to aid and assist this Court by rendering an opinion concerning the tax loss carry forward which the Debtor has available in relation to the Plan of Reorganization as submitted to this Court. This tax-loss carry forward at the present time is an asset in excess of $2,500,000.00, and the salvaging of all or any part thereof within the intended Plan of Reorganization is important in the administration of this estate.

These are some of the matters which this Court has actual knowledge of because of its minute supervision and surveillance of the proceedings. It appears that the objections filed are not well taken; in view of the fact that no witness was presented and no testimony offered, said objections can only be classified as a bargaining argument.

This Court has, by previous Order, made an allocation of administrative charges amongst the consolidated estates; however, because of the interrelationship of the consolidated matters, while each estate has borne its respective share of the interim fees heretofore awarded, the Court considers the total dollar sums heretofore allowed and will credit said sums as to any and all allowances made for the period involved, as set forth in the applications filed for interim fees.

While the attorney for the Trustee seeks compensation upon an hourly rate in connection with the number of hours expended—specifically 2,394 hours and 30 minutes, and the Trustee seeks remuneration for the expenditure of 2,414 hours and 30 minutes, which expenditure of time this Court finds uncontradicted by any legally sufficient evidence, this Court has insisted that while the number of hours expended is a factor in determining fees, it is not the sole and exclusive factor. The Court, while taking said factor into consideration, does reiterate that the Court has examined the entire record of services performed by both the Trustee and his attorney, and being full well familiar with these proceedings, does take into consideration in establishing the Trustee's interim fee his executive ability, his organizational ability, his direction of the affairs and business of the estates, his decisions and recommendations to this Court concerning liquidations and salvaging of properties, the interfinancings which precluded and prevented the issuance of Certificates of Indebtedness further encumbering the etates but still enabling the estates through internal financing to maintain an economic semblance in their administration. The Court recognizes on behalf of the Trustee and his attorney their ingenuity and their diligence and successes, and presentment to the Court and the parties materially and adversely affected of a complete and understandable kaleidoscopic picture of the financial affairs of the Debtors. This Court feels that by virtue of the status of the record and the accomplishments achieved and the time expended by the Trustee and his attorney that any award made at the present time on an interim basis could only be classified as reasonable and not in accordance with the true value of the services performed.

It appears that Massachusetts Mutual Life Insurance Company has constantly reiterated and expressed a fear, unwarranted by the record and unsupported by these proceedings, that the secured creditors, of which it is one, will be taxed and be required to pay and discharge at least on a prorata basis, administrative costs in the nature of the Trustee's fees and the attorney for the Trustee's fees. This assumption is not supported by the record, the facts in the matter, the applications made, or the law involved.

It further appears from the record that due and sufficient notice of hearing for the application for interim fees for the period involved was given to all parties materially and adversely affected by these proceedings, and to such parties of record as this Court has designated as being entitled to receive copies of all pleadings, and the Court being fully advised in the premises, having reviewed the record of the proceedings for the interval of time for which the attorney and the Trustee seek compensation and fees for service rendered, and it further appearing that this Court has jurisdiction over the parties and the subject matter to enter the hereinafter Order, it is thereupon

ORDERED:

1. That the said J. H. BROCK, as Trustee of the estates in these consolidated causes, be and he is hereby awarded interim compensation in the amount of $96,580 for the period commencing May 24, 1966 and concluding June 30, 1968, and that he has been awarded for and on account of said services the sum of $61,000.00, and that therefore there is further interim allowance due and owing to the said Trustee, J. H. BROCK in the amount of

$35,580 as allowance of compensation for the interim period commencing May 24, 1966 and concluding June 30, 1968, for the said services so rendered during said period in these proceedings.

2. That IRVING M. WOLFF, as attorney for the Trustee J. H. BROCK, be and he is hereby awarded interim compensation in the amount of $141,500 for legal services rendered by said IRVING M. WOLFF in accordance with the Orders appointing him under a general retainer as attorney for the said Trustee, and that he has received as a partial allowance of said legal services the sum of $72,500.00, and that therefore there is presently further interim allowance due and owing to the said attorney for the Trustee, IRVING M. WOLFF, in the amount of $69,000 as allowance of compensation for the interim period commencing May 24, 1966 and concluding June 30, 1968, for the said services so rendered during said period in these proceedings.

3. Nothing herein contained shall modify, alter, or amend this Court's Order of May 3, 1968 entitled "ORDER APPORTIONING ADMINISTRATIVE COSTS AND TAXING THE SAME", apportioning administrative claims amongst the consolidated estates and all allowances made for services rendered by the Trustee and the attorney for the Trustee; however, the interim fees herein awarded are taxed against and are to be borne by the Wingreen estate solely.

4. The foregoing fees awarded to the Trustee and to his attorney in these consolidated proceedings are on an interim basis and such awards will be taken into consideration at the time of the final award of fees and compensation for the Trustee and his attorney in these consolidated proceedings.

5. That the said J. H. BROCK, Trustee in these consolidated proceedings, prior to his payment and discharge of said awards, shall satisfy himself that all parties awarded compensation and allowance and reimbursement of costs have filed their respective affidavits as required by Section 249 of the Bankruptcy Act [11 U.S.C.A. § 649].

6. That the said Trustee, within twenty (20) days from the entry of this Order, shall mail a copy hereof to all creditors and stockholders of the said foregoing and enumerated Debtors in these consolidated proceedings as the same are reflected by the records of the said respective Debtors now in the possession of the said Trustee.

7. That all of the allowances for compensation and fees are for services rendered during the period set forth in the respective applications and hereinbefore provided for in this Order in conjunction with the administration of the instant Debtor estates in these consolidated proceedings, and that all of said compensation, allowances, fees and reimbursements for expenditures are reasonable and that the said awards are hereby allowed in payment on an interim basis for such services rendered, and the said Trustee, J. H. BROCK, in these consolidated proceedings is hereby authorized to make payment in the amount of $35,580 to the said Trustee, J. H. BROCK and $69,000 to Irving M. Wolff as attorney for the Trustee, as hereinabove provided.

DONE and ORDERED, at Miami, Florida, this 6 day of August, 1968.

/s/ W.O. MEHRTENS

UNITED STATES DISTRICT JUDGE

**APPENDIX**
**N**

**UNITED STATES COURT OF APPEALS**
**FOR THE FIFTH CIRCUIT**

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October Term, 1967

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**No. 25,303**

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D.C. Docket Nos. BK 66-28, 66-29 and 66-30 Wm
(Consolidated)

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MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY and COLLEGE INN, INC.,

Appellants,

versus

J. H. BROCK, as Trustee of THE WINGREEN COMPANY, ET AL.,

Appellees.

---

**Appeal from the United States District Court for the Southern District of Florida.**

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Before THORNBERRY and SIMPSON, Circuit Judges and SUTTLE, District Judge.

## JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Florida, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the order appealed from in this cause be, and the same is hereby, reversed, and that this cause be and the same is hereby remanded to the Said District Court with directions, in accordance with the opinion of this Court;

It is further ordered and adjudged that the appellees, J. H. Brock as Trustee of The Wingreen Company, and others, be condemned, in solido, to pay costs of this cause in this Court for which execution may be issued out of the said District Court.

December 5, 1968.

Issued as Mandate: Jan. 31, 1969.

A true copy
Edward W. Wadsworth,
Clerk U. S. Court of Appeals, Fifth Circuit.

By_____
Deputy

Jan. 31, 1969
New Orleans, Louisiana.

## APPENDIX O

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

October Term, 1968

**No. 26,479**

D. C. Docket No. BK 66-28-WM

In the Matter of:

THE WINGREEN COMPANY
MASSACHUSETTS MUTUAL LIFE
INSURANCE COMPANY, Appellant,
versus
J. H. BROCK, Trustee Appellee.

**No. 26,711**

In the Matter of:

THE WINGREEN COMPANY
MASSACHUSETTS MUTUAL LIFE
INSURANCE COMPANY, Appellant,
versus
J. H. BROCK, Trustee Appellee.

**Appeals from the United States District Court for the Southern District of Florida.**

Before GEWIN, BELL and DYER, Circuit Judges.

## JUDGMENT

This cause came on to be heard on the transcript of the records from the United States District Court for the Southern District of Florida, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the orders appealed from in this cause be, and the same are hereby reversed, and that this cause be, and the same is hereby remanded to the said District Court with directions, in accordance with the opinion of this Court;

It is further ordered and adjudged that the appellee, J. H. Brock, Trustee, be condemned to pay the costs of this cause in this Court for which execution may be issued out of the said District Court.

December 5, 1968.

Issued as Mandate: Jan. 31, 1969.

A true copy
Edward W. Wadsworth,
Clerk, U.S. Court of Appeals, Fifth Circuit.

By_____
Deputy

Jan. 31, 1969
New Orleans, Louisiana.

**APPENDIX**
**P**

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

---

**No. 25,303**

---

In the Matter of:
THE WINGREEN COMPANY
MASSACHUSETTS MUTUAL LIFE
INSURANCE COMPANY,

Appellant,

versus

J. H. BROCK, Trustee

---

**Appeals from the United States District Court for the Southern District of Florida.**

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(January 6, 1969)

**ON PETITION FOR HEARING**

Before THORNBERRY and SIMPSON, Circuit Judges, and SUTTLE, District Judge

PER CURIAM:

IT IS ORDERED that the petition of appellee Brock in the above entitled and numbered cause be and the same is hereby DENIED.

U. S. Court of Appeals
FILED
January 6, 1969
Edward W. Wadsworth,
Clerk

**APPENDIX**
**Q**

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

---

**No. 26,479**

---

In the Matter of:
THE WINGREEN COMPANY
MASSACHUSETTS MUTUAL LIFE
INSURANCE COMPANY,

Appellant,

versus

J. H. BROCK, Trustee,

Appellee.

---

**No. 26,711**

---

In the Matter of:
THE WINGREEN COMPANY
MASSACHUSETTS MUTUAL LIFE
INSURANCE COMPANY,

Appellant,

versus

J. H. BROCK, Trustee,

Appellee.

---

**Appeals from the United States District Court for the Southern District of Florida**

---

(January 15, 1969)

**ON PETITION FOR REHEARING**

Before GWEN, BELL and DYER, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition of appellee Brock for rehearing in the above entitled and numbered causes be and the same is hereby DENIED.

Entered nunc pro tunc as of January 6, 1969, this 15th day of January, 1969.

**APPENDIX**
**R**

**IN THE UNITED STATES COURT OF APPEALS**
**FOR THE FIFTH CIRCUIT**

---

**Case No. 25,303**
**No. 26,479**
**No. 26,711**

---

MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY,

Appellant,

vs.

J. H. BROCK as Trustee of THE WINGREEN COMPANY, et al.

Appellee.

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## MOTION TO TAX COSTS

The Appellant, MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY, by and through its undersigned attorneys, moves this Honorable Court, pursuant to FRAP 39, to tax costs against the Appellee, J. H. BROCK, as Trustee of The Wingreen Company, and in support thereof shows unto the Court as follows:

1. On December 5, 1968 this Honorable Court entered its opinion reversing the order of the United States District Court for the Southern District of Florida dated Feb-

ruary 19, 1968 and ordered the reduction of the fees awarded to the Trustee to $25.00 an hour and the fees awarded to the attorney for the Trustee to $50.00 an hour. Thereafter the Appellee filed a Petition for Rehearing and on January 6, 1969 this Honorable Court denied the Petition for Rehearing.

2. Subsequent fee appeals were taken in Case No. 26,479 and No. 26,711 and on December 5, 1968 this Honorable Court entered its Order directing the District Court to reconsider the request for fees in accordance with the opinion in Case No. 25,303, and stated:

> "The facts and circumstances of these reorganization proceedings will not warrant the fees in excess of $25.00 per hour for the trustee and $50.00 per hour for counsel for this period."

3. Thereafter, this Court entered its opinion on January 15, 1969 nunc pro tunc as of January 6, 1969 denying the petition of the Appellee Brock for rehearing in Case No. 26,479 and Case No. 26,711. After receiving a copy of the notice that the Petition was denied on January 16, 1969, the Appellant requested the court reporter who had printed the record on appeal and the Review Printing Company, to send him copies of their itemised statement of their costs for their services showing the amount paid per page so that the Appellant could proceed to tax costs in accordance with the opinion of this Court. Because of the work load of both George E. Ahern, and the Review Printing Company there was a delay in receiving a return of the requested information. The Appellant has now received this information regarding the costs of the briefs and the record, which is required by Rule 39 which became effective on July 1, 1968, and which sets forth the uniform procedure in the various Circuits for taxing costs.

4. While the Appellant was in the process of obtaining the costs information to comply with Rule 39, it received a letter of transmittal dated January 31, 1969 from the Clerk of this Honorable Court directed to the Clerk of the United States District Court enclosing a certified copy of the judgment of this court, issued as and for the mandate, together with a copy of the opinion. The letter proceeded to state that incorporated on the judgment is a detailed statement of the costs in this Court, as follows: "Docketing cause, etc., . . . $25.00 recoverable by appellants from appellees."

5. Since the parties were the same in all three of these fee appeals, involving the same Chapter 10 Reorganization case, Appellant is setting forth all of the costs involved in the three appeals in this one Petition.

The costs involved in Case No. 25,303 are as follows:

A. Invoice No. 034 dated May 1, 1968 from George E. Ahern official court reporter, U.S. District Court, Miami, Florida 33101 addressed to undersigned counsel for Appellant for printing 21 copies of Four Volumes of Joint Appendix, and one Supplemental Volume, at a charge of $1.50 per page (no charge for binding, mailing & photographing), for a total charge of ..... $2,187.50
which was paid

B. Invoice No. D-715 dated December 11, 1967 from Review Printing Company P.O. Box 589, Miami, Florida 33101 for printing 35 copies of Appellant's Brief at a cost of approximately $6.60 per page, including covers and binding for a total charge of ..... 115.36

C. Invoice No. 934 dated February 1, 1968 of the Review Printing Company, for printing 35 copies of Appellant's 9-page Reply Brief to Motion to Dismiss for lack of Jurisdiction [red cover] at a charge of $6.07 per page including covers and binding for a total of ..... 43.78

D. Invoice No. 1462 dated May 15, 1968 of the Review Printing Company for printing 35 copies of a 38-page Brief of the Appellant on the Merits and Appendix with Exhibits at a charge

| | |
|---|---|
| of $4.50 per page | 171.00 |
| printed covers | 6.50 |
| binding charges | 5.50 |
| | $183.00 |
| Tax | 7.32 |
| Total of | 190.32 |

The Costs involved in Cases No. 26,479 and 26,711 are as follows:

A. Invoice No. 1976 dated September 4, 1968 of the Review Printing Company for 35 copies of a 34-page brief of Appellant at $7.50 per page for $255.00

| | | |
|---|---|---|
| plus 35 copies of 19-page printed appendix with exhibits at $12.50 per pg. | 237.50 | |
| plus charges for special printing of Financial statements in the exhibits, the binding and covers | 127.80 | |
| | $620.30 | |
| plus tax | 24.81 | 645.11 |
| B. Review Printing Company for 35 copies of an 18-page Reply Brief of Appellant at $7.50 per pg., | 135.00 | |
| plus $6.50 for printed covers; plus $5.66 tax—total | | 147.16 |
| TOTAL COSTS ON APPEAL NO. 25,303 | | $2,421.60 |
| TOTAL COSTS ON APPEALS NOS. 26,479 & 26,711 | | $ 792.27 |
| TOTAL OF ALL CONSOLIDATED CASES | | $3,213.87 |

6. Rule 39D FRAP provides:

> "* * * if the mandate has been issued before the final determination of costs, the statement or any amendment thereof, may be added to the mandate upon request to the Clerk of the Court of Appeal."

The Appellant has worked diligently to obtain the information provided in this Motion so that the Court can tax costs. The Appellant is filing this Motion for the Court to tax costs because the mandate was issued before the costs were finally determined in this case.

Wherefore, the Appellant moves this Honorable Court to tax the costs in the total amount of $3,213.87 against the Appellee, J. H. Brock, Trustee in the above three companion appeals, pursuant to the provisions of Rule 39(d) FRAP.

Dated at Miami, Florida this 19 day of February, 1969.

DIXON, BRADFORD, WILLIAMS,
McKAY & KIMBRELL, P.A.
9th Flr. Dade Federal Savings Bldg.,
101 East Flagler Street
Miami, Florida 33131
*Attorneys for Appellant*

By: CARL K. HOFFMANN,
*Of Counsel*

STATE OF FLORIDA
COUNTY OF DADE

Before me, the undersigned authority, on this date personally appeared CARL K. HOFFMAN who being duly sworn deposes and says that the statements contained in the foregoing Motion to Tax Costs are true and correct.

CARL K. HOFFMANN

Sworn to & Subscribed before me this 19th day of Feb. 1969.

Catherine G. Ashley,
NOTARY PUBLIC, State of Florida at Large.

My Commission Expires April 25, 1969.
Bonded through Fred W. Diestelhorst.

## CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing Motion to Tax Costs was mailed to the offices of IRVING M. WOLFF, attorney for the Appellee, 916 Biscayne Building, Miami, Florida 33130 this 19 day of February, 1969.

DIXON, BRADFORD, WILLIAMS
McKAY & KIMBRELL, P.A.
*Attorneys for Appellant*

By: CARL K. HOFFMANN,
*Of Counsel*